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 PRISCILLA PEREZ

10
 11 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

12 PRISCILLA PEREZ)	Case No. <u>'16CV0100 AJB MDD</u>
)	
13 Plaintiff,)	
)	COMPLAINT FOR DAMAGES
14 vs.)	
)	
15)	
AARGON AGENCY INC. D/B/A)	[DEMAND FOR JURY TRIAL]
16 AARGON COLLECTION AGENCY; and)	
WESTERN DENTAL SERVICES, INC.)	
17)	
Defendants.)	
18)	
)	
19)	

20 Plaintiff PRISCILLA PEREZ alleges as follows:

21

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I.
INTRODUCTION

1. Plaintiff PRISCILLA PEREZ (hereinafter referred to as “Plaintiff”), brings this lawsuit against Defendant AARGON AGENCY INC. D/B/A AARGON COLLECTION AGENCY (hereinafter “AARGON”) for violations of the Federal Fair Debt Collection Practices Act (“FDCPA”), the Rosenthal Fair Debt Collections Practice Act (“Rosenthal FDCPA”) and the California Consumer Credit Reporting Agencies Act (“CCRAA”).

2. Plaintiff brings this lawsuit against Defendant WESTERN DENTAL SERVICES, INC. (hereinafter “WESTERN”) for violations of the Rosenthal FDCPA, and the California Consumer Credit Reporting Agencies Act (“CCRAA”).

3. Plaintiff brings this action to seek actual damages, statutory damages, attorneys’ fees and costs, and other relief the Court deems appropriate.

II.
PARTIES

4. Plaintiff is, and at all times mentioned herein was, an individual, residing in the County of Imperial, State of California.

5. Plaintiff is a “consumer” as defined by 15 U.S.C. section 1692a(3) and California Civil Code section 1785.3(b), and a “debtor” as the term is defined by California Civil Code section 1788.2(h).

6. Plaintiff is informed and believes, and thereupon alleges, that Defendant AARGON is, and at all times mentioned herein was, a corporation who was

1 conducting and engaging in business in the County of Imperial, State of California.

2 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant
3 WESTERN is, and at all times mentioned herein was, a corporation who was
4 conducting and engaging in business in the County of Imperial, State of California.

5 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant
6 AARGON uses an instrumentality of interstate commerce or the mails in a business
7 the principal purpose of which is the collection of debts, or who regularly collects or
8 attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or
9 due another and is therefore a debt collector as that phrase is defined by 15 U.S.C.
10 section 1692a(6).

11 9. Plaintiff is informed and believes, and thereupon alleges that Defendants
12 AARGON and WESTERN are debt collectors as defined under Civil Code section
13 1788.2(c).

14 10. Defendants AARGON and WESTERN attempted to collect a consumer
15 debt as defined under the FDCPA and Rosenthal FDCPA.

16 11. Plaintiff is informed and believes and thereupon alleges that at all times
17 herein mentioned each of the Defendant was the agent, servant, employee, or partner
18 of each of the remaining defendants and, in committing the acts and omissions
19 hereinafter alleged, was acting within the course and scope of such agency,
20 employment, partnership, or other business relationship, and were each responsible
21 for the acts and omissions alleged in this complaint.

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III.
JURISDICTION AND VENUE

12. This Court has jurisdiction under 15 U.S.C. section 1692k(d), 28 U.S.C. section 1331, and 28 U.S.C. section 1367 for supplemental state claims.

13. This action arises out of violations of the FDCPA and Rosenthal FDCPA, and the CCRAA. Because Defendants AARGON and WESTERN do business within the State of California, County of Imperial, personal jurisdiction is established.

14. Venue is proper pursuant to 28 U.S.C. section 1391.

IV.
RELEVANT FACTS

15. Sometime in 2007, when Plaintiff was a minor, she received dental services from Defendant WESTERN. Upon information and belief, the dental services were for braces only.

16. Because Plaintiff was a minor, her mother signed as the financially responsible party.

17. Upon information and belief, the contract entered into between WESTERN and Plaintiff's mother will show that Plaintiff's mother was the only person financially responsible for the treatment Plaintiff received.

18. At some point thereafter, Plaintiff's mother failed to pay the alleged outstanding debt. Plaintiff's mother subsequently filed for bankruptcy in 2010, which included the alleged debt owed to Defendant WESTERN. The entire debt was

1 discharged on or about November 3, 2010.

2 19. On September 16, 2015, Plaintiff obtained her credit report with
3 Experian, which indicated that Plaintiff owed \$2,112.00 (hereinafter “Account”) to
4 Defendant AARGON and that the Account is in “collection.”

5 20. Upon investigation, Plaintiff discovered that the Account with Defendant
6 AARGON was for a debt allegedly owed to Defendant WESTERN. This is the same
7 debt that was discharged in Plaintiff’s mother’s bankruptcy.

8 21. Upon information and belief, Defendant WESTERN had assigned the
9 debt, even though it was discharged in Plaintiff’s mother’s bankruptcy, to Defendant
10 AARGON for collection purposes.

11 22. Because Defendant AARGON was assigned this alleged debt for
12 collection by Defendant WESTERN, Defendant AARGON was at all times relevant
13 herein the agent working for, in association with, at the direction of, and on behalf of
14 Defendant WESTERN, and therefore any violations committed by Defendant
15 AARGON flow through as vicarious liability to Defendant WESTERN.

16 23. Because Defendant AARGON was acting as the agent for Defendant
17 WESTERN, Defendant AARGON knew or should have known that Plaintiff was not
18 the financially responsible party on the debt, because Defendant AARGON was the
19 agent for Defendant WESTERN and therefore stepped in the shoes of Defendant
20 WESTERN, and Defendant WESTERN’s records should clearly show that the mother
21 was the only financially responsible party and that Defendant WESTERN submitted a

1 proof of claim of the debt in the mother's bankruptcy.

2 24. As a result of the derogatory report upon her credit report, Plaintiff
3 suffered a reduction in her consumer credit score that she should not have otherwise
4 suffered since she has never been financially responsible for the alleged debt, which
5 deprived her of an accurate reflection of her creditworthiness and credit standing.

6 25. As a direct result of the reduced credit score, Plaintiff has suffered
7 multiple increased interest rates on consumer lines of credit and has also been
8 outrightly denied at least one consumer credit loan.

9 26. Had the inaccurate derogatory information not been contained on
10 Plaintiff's credit reports, then her credit score would have been a higher, and accurate,
11 number, and she would not have suffered the higher interest rates or the outright
12 credit denial described above.

13 27. Furthermore, Plaintiff has suffered actual damages by way of mental
14 anguish, such as embarrassment, humiliation, anxiety, nervousness, and feelings of
15 hopelessness and despair over the fact that her mother's financial debts are now
16 directly effecting her life as an adult consumer.

17 28. On October 19, 2015, Plaintiff's attorney sent a letter to Defendant
18 AARGON, informing AARGON that Plaintiff was disputing the debt. The letter also
19 requested that AARGON provide a validation of the debt as well as any and all
20 collection letters it sent to Plaintiff and any and all documents and/or agreements
21 Plaintiff entered into on the Account. AARGON never responded.

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29. Upon information and belief, both Defendants WESTERN and AARGON have an on-going pattern of engaging in derogatory credit reporting against minor patients when their parents fail to pay the debts that result from services for treatment upon the minor patients, despite the fact that the minor patients have never been financially responsible, and therefore punitive damages are warranted.

V.

FIRST CAUSE OF ACTION

(Violation of the FDCPA Against Defendant AARGON)

30. Plaintiff re-alleges each of the paragraphs above, as if fully set forth herein.

31. Defendant AARGON violated the FDCPA by violating 15 U.S.C. sections 1692(e), 1692e(2)(A), 1692e(5), 1692e(8), 1692e(10) and 1692f.

COUNT 1

32. Defendant AARGON violated 15 U.S.C. sections 1692e, 1692e(2)(A), and 1692e(10) by falsely and deceptively misrepresenting that Plaintiff owed \$2,112.00 when in fact Plaintiff never owed the debt because the debt belonged to her mother and had already been discharged in bankruptcy.

COUNT 2

33. Defendant AARGON violated 15 U.S.C. sections 1692e(5), and 1692e(10) when it took a legal action that it could legally not have taken. Specifically, Defendant AARGON reported to the credit bureaus, including Experian that Plaintiff owed \$2,112.00 when in fact Plaintiff never owed the debt because the debt belonged

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1 to her mother and had already been discharged in bankruptcy.

2 **COUNT 3**

3 34. Defendant AARGON violated 15 U.S.C. sections 1692e, 1692e(8), and
4 1692e(10) by inaccurately reporting to the credit bureaus, including Experian, that
5 Plaintiff owed \$2,112.00 when in fact Plaintiff never owed the debt because the debt
6 belonged to her mother and had already been discharged in bankruptcy.

7 **COUNT 4**

8 35. Defendant AARGON violated 15 U.S.C. section 1692f when it engaged
9 in unfair and unconscionable means to collect or attempt to collect a debt.
10 Specifically, by reporting to the credit bureaus, including Experian, that Plaintiff
11 owed \$2,112.00 when in fact Plaintiff never owed the debt because the debt belonged
12 to her mother and had already been discharged in bankruptcy.

13 **COUNT 5**

14 36. As a result of each and every violation of the FDCPA as alleged in
15 Counts 1 through 5, Plaintiff has suffered actual damages and harm resulting from
16 Defendant AARGON's actions as heretofore alleged, including but not limited to
17 worry, emotional distress, anxiety, humiliation, loss of creditworthiness and credit
18 standing, and out-of-pocket expenses the exact amount of which is to be proven at
19 trial.

20 37. As a result of each and every violation of the FDCPA, as alleged in
21 Counts 1 through 5, Plaintiff is entitled to actual damages pursuant to 15 U.S.C.

1 section 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15
2 U.S.C. section 1692k(a)(2)(A) and reasonably attorneys' fees and costs pursuant to 15
3 U.S.C. section 1692k(a)(3).

4
5 **VI.**
6 **SECOND CAUSE OF ACTION**
7 **(Violation of the Rosenthal FDCPA against Defendant AARGON)**

8 38. Plaintiff re-alleges each of the paragraphs above, as if fully set forth
9 herein.

10 39. The violations of the FDCPA identified below are all violations of
11 California Civil Code section 1788.17, also known as the Rosenthal FDCPA, because
12 section 1788.17 incorporates them as such.

13 40. Defendant AARGON violated Civil Code section 1788.17 because it
14 violated 15 U.S.C. sections 1692e, 1692e(2)(A), 1692e(5), 1692e(8), 1692e(10) and
15 1692f.

16 41. As a result of each and every violation of the Rosenthal FDCPA,
17 Plaintiff has suffered actual damages and harm resulting from Defendant AARGON's
18 actions as heretofore alleged, including but not limited to worry, emotional distress,
19 anxiety, humiliation, loss of creditworthiness and credit standing, and out-of-pocket
20 expenses the exact amount of which is to be proven at trial.

21 42. As a result of each and every violation of the Rosenthal FDCPA,
Plaintiff is entitled to actual damages pursuant to California Civil Code section
1788.30(a); statutory damages under 1692k(a)(2)(A) which is incorporated by

1 California Civil Code section 1788.17; statutory damages for a knowing or willful
 2 violation in the amount of up to \$1,000.00 pursuant to California Civil Code section
 3 1788.30(b); and reasonable attorney's fees and costs pursuant to California Civil
 4 Code section 1788.30(c).

5 **VII.**

6 **THIRD CAUSE OF ACTION**

7 **(Violation of the Rosenthal FDCPA against Defendant WESTERN)**

8 43. Plaintiff re-alleges each of the paragraphs above, as if fully set forth
 9 herein.

10 44. The violations of the FDCPA identified below are all violations of
 11 California Civil Code section 1788.17, also known as the Rosenthal FDCPA, because
 12 section 1788.17 incorporates them as such.

13 45. Defendant WESTERN violated Civil Code section 1788.17 because it
 14 violated 15 U.S.C. sections 1692e, 1692e(2)(A), and 1692e(10) when it wrongfully
 15 attempted to collect a debt, by and through Defendant AARGON, from Plaintiff even
 16 though Plaintiff never owed the debt because the debt belong to Plaintiff's mother and
 17 had already been discharged in bankruptcy.

18 46. Defendant WESTERN violated Civil Code section 1788.17 because it
 19 violated 15 U.S.C. sections 1692e, 1692e(2)(A), and 1692e(10) when it wrongfully
 20 assigned and/or transferred the debt to Defendant AARGON for collections, even
 21 though Plaintiff never owed the debt because the debt belong to Plaintiff's mother and
 had already been discharged in bankruptcy.

47. As a result of each and every violation of the Rosenthal FDCPA, Plaintiff has suffered actual damages and harm resulting from Defendant WESTERN's actions as heretofore alleged, including but not limited to worry, emotional distress, anxiety, humiliation, loss of creditworthiness and credit standing, and out-of-pocket expenses the exact amount of which is to be proven at trial.

49. Plaintiff re-alleges each of the paragraphs above, as if fully set forth herein.

1 Plaintiff does not owe such debt. Defendant AARGON knew or should have known
 2 that the information it provided to the consumer credit reporting agency, including
 3 Experian, was incomplete or inaccurate because as the agent assigned to collect the
 4 debt on behalf of Defendant WESTERN Defendant AARGON should have known
 5 that Defendant WESTERN's records showed the mother as the only financially
 6 responsible party and that the debt had been discharged in the mother's bankruptcy.

7 52. As a result of each and every violation of the CCRAA, Plaintiff has suffered
 8 actual damages and harm resulting from Defendant AARGON's actions as heretofore
 9 alleged, including but not limited to worry, emotional distress, anxiety, humiliation,
 10 loss of creditworthiness and credit standing, and out-of-pocket expenses the exact
 11 amount of which is to be proven at trial.

12 53. As a result of each and every violation of the CCRAA, Plaintiff is entitled to
 13 actual damages, reasonable attorney's fees and costs pursuant to California Civil
 14 Code section 1785.33(a)(1); and statutory damages for a knowing or willful violation
 15 in the amount of up to \$5,000.00 pursuant to California Civil Code section
 16 1788.31(a)(2)(B).

17 **IX.**
FIFTH CAUSE OF ACTION
(Violations of the CCRAA against Defendant WESTERN)

19 54. Plaintiff re-alleges each of the paragraphs above, as if fully set forth herein.

20 55. Because Defendant AARGON was assigned this alleged debt for collection
 21 by Defendant WESTERN, Defendant AARGON was at all times relevant herein the

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1 agent working for, in association with, at the direction of, and on behalf of Defendant
 2 WESTERN, and therefore any violations committed by Defendant AARGON flow
 3 through as vicarious liability to Defendant WESTERN.

4 56. Because Defendant AARGON was acting as the agent for Defendant
 5 WESTERN, Defendant AARGON knew or should have known that Plaintiff was not
 6 the financially responsible party on the debt, because Defendant AARGON was the
 7 agent for Defendant WESTERN and therefore stepped in the shoes of Defendant
 8 WESTERN, and Defendant WESTERN's records should clearly show that the mother
 9 was the only financially responsible party and that Defendant WESTERN submitted a
 10 proof of claim of the debt in the mother's bankruptcy.

11 57. Therefore, Defendant AARGON's violations of California Civil Code
 12 section 1785.25(a) as explained above flow through as liability to Defendant
 13 WESTERN.

14 58. As a result of each and every violation of the CCRAA, Plaintiff has
 15 suffered actual damages and harm resulting from Defendants' actions as heretofore
 16 alleged, including but not limited to worry, emotional distress, anxiety, humiliation,
 17 loss of creditworthiness and credit standing, and out-of-pocket expenses the exact
 18 amount of which is to be proven at trial.

19 59. As a result of each and every violation of the CCRAA, Plaintiff is entitled to
 20 actual damages, reasonable attorney's fees and costs pursuant to California Civil
 21 Code section 1785.33(a)(1); and statutory damages for a knowing or willful violation

1 in the amount of up to \$5,000.00 pursuant to California Civil Code section
2 1788.31(a)(2)(B).

3 **X.**
4 **PRAYER FOR DAMAGES AND OTHER REMEDIES**

- 5 1. For actual damages;
6 2. For statutory damages;
7 3. For interest according to law;
8 4. For attorneys' fees;
9 5. For costs of suit herein incurred; and
10 6. For other and further relief as the court may deem proper.

11 DATED: January 14, 2015

MASHIRI LAW FIRM
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12 By: /s/Alex Asil Mashiri
13 Alex Asil Mashiri
14 Attorney for Plaintiff,
15 PRISCILLA PEREZ
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